IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DDI ARCHITECTS, P.C.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
EDGAR DALE, et al.	:	NO. 00-CV-3262

MEMORANDUM

Padova, J. **August , 2000**

The instant action is related to an earlier suit between the same parties that settled in May, 2000. On February 23, 2000, Plaintiff DDI Architects, P.C. ("DDI") filed a Complaint and Motion for a Temporary Restraining Order seeking to enjoin Defendants Mars 2112 Global Limited and Mars 2112 Woodfield Corporation (collectively "Mars"), and Edgar Dale's ("Dale") use of DDI's architectural plans for a Mars 2112 theme restaurant located in Schaumburg, Illinois ("February Action"). Plaintiff's Complaint alleged copyright infringement, conversion, tortious interference with current and prospective contractual relations, and breach of employment contract. Following several conferences in chambers, the parties dictated a settlement agreement in open court on May 2, 2000. On the same day, the Court entered an Order dismissing the February Action with prejudice pursuant to Local Rule of Civil Procedure 41.1(b).

Following dismissal of the February Action and referral of the disputes to the American Arbitration Association ("AAA"), Defendants filed an Answer with the AAA. Defendant's Answer stated counterclaims for defamation, breach of fiduciary duty, tortious interference with contract and

business relations, and abuse of process. These counterclaims concern DDI's conduct during the parties' ongoing disputes. The arbitrability of Defendant's counterclaims forms the heart of the instant dispute between the parties.

DDI filed a Petition to Stay Arbitration in the Court of Common Pleas of Philadelphia County on June 23, 2000, against Dale and the Mars Defendants. At that time, Plaintiff requested a temporary restraining order enjoining Defendants from raising any of their counterclaims in the arbitration proceeding on the ground that the counterclaims lie outside the scope of the arbitration agreement. The Court of Common Pleas denied Plaintiff's motion. Defendants subsequently removed Plaintiff's Petition to this Court. The parties participated in preliminary injunction hearings on July 12, 2000, and July 19, 2000, before the Honorable Robert F. Kelly presiding as emergency judge. Following the hearings, Judge Kelly denied Plaintiff's request for a preliminary injunction.

DDI now seeks a final decision on the Petition to Stay Arbitration and requests the Court enter a permanent injunction enjoining arbitration of Defendant's counterclaims. Both parties have agreed to submit the matter on the briefs and the evidentiary record developed before Judge Kelly. The matter, therefore, is ripe for decision. For the reasons that follow, the Court denies Plaintiff's Petition.

I. LEGAL STANDARD

At the threshold, the Court must determine what law applies to the instant arbitration agreement. Defendant argues that the Federal Arbitration Act ("FAA"), 9 U.S.C. §1 et seq., governs the agreement, whereas Plaintiff contends that Pennsylvania law applies. The Court determines that the FAA does not apply to the instant agreement. Rather, Subchapter B of the Pennsylvania Uniform Arbitration Act governs the parties' agreement.

The FAA provides:

> [A]n agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. §2 (1994). Section 2 of the FAA requires that the arbitration provision be in writing. Lopresti v. Electro-Films, Inc., Civ. A. No. 92-2965, 1992 WL 309634, at *3 (E.D. Pa. Oct. 20, 1992)("As a threshold matter, in order for the Federal Arbitration Act to apply, there must be a written agreement to arbitrate and the transaction must involve commerce."). The parties in this case orally agreed to arbitrate their disputes. The FAA, therefore, does not apply to this settlement agreement.[1]

The Pennsylvania Uniform Arbitration Act ("PUAA") provides that arbitration agreements that are not in writing or that fail to provide for arbitration under Subchapter A of the PUAA are governed by state common law pursuant to Subchapter B. See 42 Pa. Cons. Stat. Ann. §7302(a) (West 2000). Since the instant contract was not in writing, Subchapter B of the PUAA applies.

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[1]The Court notes that the legal standards applied under Pennsylvania law and the FAA are identical. Both Pennsylvania and federal law encourage enforcement of arbitration agreements. See Sena v. Gruntal & Co. L.L.C, No. Civ. A. 99-3042, 1999 WL 732974, at *3 (E.D. Pa. Sept. 21, 1999); Lincoln Univ. v. Lincoln Univ. Chapter of the Am. Assoc. of Univ. Professors, 354 A.2d 576, 581 (Pa. 1976). Under both the FAA and Pennsylvania law, courts are limited to determining whether the parties entered into a valid arbitration agreement and whether the specific dispute falls within the scope of that agreement. John Hancock Mutual Life Ins. Co. v. Olick, 151 F.3d 132, 137 (3d Cir. 1998); Muhlenberg Township Sch. Dist. Auth. v. Pennsylvania Fortunato Constr. Co., 333 A.2d 184, 186 (Pa. 1975). When determining whether a dispute falls within the scope of the agreement, the court may not stay arbitration unless the court can state "with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." Painewebber Inc. v. Hartmann, 921 F.2d 507, 511 (3d Cir. 1990)(quoting United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960)); Lincoln Univ., 354 A.2d at 581-82. The Court's ultimate conclusion, therefore, would be the same under either federal or state law.

Under Pennsylvania law, arbitration agreements are valid and enforceable "except upon such grounds as exist at law or in equity relating to the validity, enforceability, or revocation of any contract." 42 Pa. Cons. Stat. Ann. §7303 (West 2000); see also 42 Pa. Cons. Stat. Ann. §7342(a) (West 2000). Courts may stay an arbitration only upon a showing that no agreement to arbitrate exists. 42 Pa. Cons. Stat. Ann. §7304 (West 2000); 42 Pa. Cons. Stat. Ann. §7342(a) (West 2000). The court's inquiry is limited to "whether an agreement to arbitrate was entered into and whether the dispute involved falls within the scope of the arbitration provision." Muhlenberg Township Sch. Dist. Auth. v. Pennsylvania Fortunato Constr. Co., 333 A.2d 184, 186 (Pa. 1975). In this case, neither party denies the existence of an arbitration agreement. The parties instead dispute whether the scope of the agreement encompasses Defendants' counterclaims. The construction and interpretation of arbitration agreements is a matter of law for the court. Emlenton Area Municipal Auth. v. Miles, 548 A.2d 623, 625 (Pa. Super. Ct. 1988). Although arbitration agreements should not be extended by implication, a court should not grant an order enjoining arbitration of a particular grievance unless the court can state "with positive assurance that the arbitration clause involved is not susceptible to an interpretation that covers the asserted dispute." Lincoln Univ. v. Lincoln Univ. Chapter of the Am. Assoc. of Univ. Professors, 354 A.2d 576, 581-82 (Pa. 1976); Emlenton, 548 A.2d at 625.

Courts employ the normal rules of contractual construction to interpret the language of arbitration provisions. See Emlenton, 548 A.2d at 626. The purpose of contract interpretation is to ascertain and effectuate the objectively manifested intentions of the contracting parties. Pacitti v. Macy's, 193 F.3d 766, 773 (3d Cir. 1999); Emlenton, 548 A.2d at 626 ("In construing a contract, the intention of the parties is paramount and the court will adopt an interpretation which under all

circumstances ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished."). Pennsylvania does not require any technical or formal language to create a valid referral to arbitration. Scholler Bros., Inc. v. Otto A.C. Hagen Corp., 44 A.2d 321, 322 (Pa. Super. Ct. 1945). Rather, the arbitration agreement should clearly reveal the intention of the parties to submit their differences to arbitration. Id.

Pennsylvania courts assume that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." Hullett v. Towers, Perrin, Forster & Crosby, Inc., 38 F.3d 107, 111 (3d Cir. 1994)(citation omitted). A determination of whether the language of an agreement is clear and unambiguous, however, is often impossible without an examination of the context in which the agreement arose. Id. The court, therefore, is not confined to the four corners of the contract. Pacitti, 193 F.3d at 773. Rather, when determining the parties' intentions, the court may consider "the words of the contract, the alternative meaning suggested by counsel, and the nature of the objective evidence to be offered in support of that meaning." Id. Additionally, the court must interpret the agreement as a whole and give effect to all of its terms. Emlenton, 548 A.2d at 626. Courts construe ambiguous contract language most strongly against the drafter. Rusiski v. Pribonic, 515 A.2d 507, 510 (Pa. 1986).

II. DISCUSSION

Plaintiff argues that the agreement between the parties provides for the arbitration of only the legal claims raised in the Complaint, and not of any counterclaims subsequently asserted by Defendant. In support, Plaintiff points to the following statement by its counsel: "The parties have agreed to submit the disputes set forth in the Complaint to a neutral third party ADR outfit

and/or two neutral arbitrators." (Tr. of Settlement Hr'g ("Settlement Tr.") at 2). Plaintiff urges the Court to interpret the phrase "the disputes set forth in the Complaint" to refer solely to Plaintiff's legal claims.

Conversely, Defendants contend that the parties' agreement when viewed as a whole and in context does not limit the arbitration to the legal claims raised in the Complaint. Defendants interpret the phrase "the disputes set forth in the Complaint" to refer to all disputes arising from the parties' previous relationship and transactions that are described in the Complaint. Since the counterclaims arise from the facts and transactions outlined in the Complaint, Defendants argue that they are similarly subject to binding arbitration.

Upon a review of the transcript of the parties' agreement, the Court concludes that the settlement agreement provides for arbitration of Defendants' counterclaims. The phrase "the disputes set forth in the Complaint" is ambiguous. That particular language does not inescapably restrict arbitration to the specific legal claims asserted by Plaintiff, but also may reasonably be construed to cover the general disputes over the ownership and use of Plaintiff's architectural plans, and the employment of Edgar Dale by the Mars Defendants that the Complaint describes. Courts construe ambiguous contract language against the drafter. Rusiski, 515 A.2d at 510. In this case, Plaintiff's counsel set forth the terms of the settlement. (Settlement Tr. at 2).

Other portions of the settlement agreement further support a broad interpretation of the scope of the arbitration. Even though the Complaint does not request or mention compensation for unpaid architectural fees, the parties contracted for an arbitrator with experience in architectural fee disputes for the specific purpose of adjudicating a claim for unpaid fees that

Plaintiff raised during the course of settlement discussions.[2] (Settlement Tr. at 3). The parties' agreement that the matter be dismissed with prejudice under Local Rule of Civil Procedure 41.1(b) similarly indicates their intent to allow the arbitrator to resolve all of the disputed issues and claims arising between the parties out of the transactions and events underlying the Complaint. (Settlement Tr. at 8). Defendants' counterclaims clearly arise from the same transactions and core facts detailed in Plaintiff's Complaint and are entwined with Defendants' affirmative defenses to Plaintiff's legal claims. An interpretation of the agreement that includes Defendant's counterclaims, therefore, is the "most reasonable, natural and probable conduct of the parties." See Emlenton, 548 A.2d at 626.

In light of the foregoing, the Court cannot say with positive assurance that the parties' arbitration agreement is not susceptible to an interpretation that covers arbitration of Defendant's counterclaims. See Lincoln Univ., 354 A.2d at 581-82. The Court, therefore, denies Plaintiff's Petition to Stay Arbitration[3]. An appropriate Order follows.

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[2]The Court rejects Plaintiff's argument that its subsequent decision to drop the fee dispute from the arbitration negates any ambiguity in the arbitration agreement. (Tr. of Prelim. Inj. Hr'g at 65-66). The Court is concerned with the parties' intentions at the time the arbitration agreement was made. Subsequent tactical decisions to advance or drop certain claims are irrelevant to the Court's inquiry.

[3]Since Plaintiff has not succeeded on the merits, a permanent injunction is inappropriate.

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O R D E R

AND NOW, this day of August, 2000, upon consideration of Plaintiff's Petition to Stay Arbitration, and all attendant and responsive submissions, **IT IS HEREBY ORDERED** that Plaintiff's Petition is **DENIED**. The Clerk of Court is **ORDERED** to **CLOSE** the above-captioned case for statistical purposes.

BY THE COURT:

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John R. Padova, J.